

1 **Rule 33. Damages for delay or frivolous appeal; recovery of attorney's fees.**

2 (a) **Damages for delay or frivolous appeal.** Except in a first appeal of right in a criminal case, if
3 the court determines that a motion made or appeal taken under these rules is either frivolous or
4 for delay, it ~~shall~~will award just damages, which may include single or double costs, as defined
5 in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the
6 damages be paid by the party or by the party's attorney.

7 (b) **Definitions.** For the purposes of these rules, a frivolous appeal, motion, brief, or other ~~paper~~
8 document is one that is not grounded in fact, not warranted by existing law, or not based on a
9 good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other
10 ~~paper~~document interposed for the purpose of delay is one interposed for any improper purpose
11 such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit
12 only the party filing the appeal, motion, brief, or other ~~paper~~document.

13 (c) **Procedures.**

14 (c)(1) The court may award damages upon any party's request~~of any party~~ or ~~up~~on its
15 own motion. A party may request damages under this rule only as part of the appellee's
16 motion for summary disposition under Rule 10, as part of the appellee's brief, or as part
17 of a party's response to a motion or other ~~paper~~document.

18 (c)(2) If the award of damages is upon the court's motion~~of the court~~, the court ~~shall~~will
19 issue to the party, ~~or~~ the party's attorney, or both an order to show cause why such
20 damages should not be awarded. The order to show cause ~~shall~~will set forth the
21 allegations ~~which~~that form the basis of the damages and permit at least ten days in which
22 to respond unless otherwise ordered for good cause shown. The order to show cause may
23 be part of the notice of oral argument.

24 (c)(3) The court will not award damages without affording the party against whom
25 damages may be awarded an opportunity to file a written objection. If a request for
26 damages is included in a filing to which a response or reply is permitted by applicable
27 rules or by a court order, any written objection to the request must be included in that
28 response or reply. When applicable rules or a court order do not provide for a response or

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reply, the court will issue a notice affording the opposing party an opportunity to submit a
written objection to the request for damages. ~~If requested by a party against whom~~
~~damages may be awarded, the court shall grant a hearing.~~ Any hearing will be at the
court's discretion.